

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	Case No. 01-01139 (JKF)
W.R. GRACE & CO., <u>et al.</u> ,)	(Jointly Administered)
)	
Debtors.)	Related D.I. Nos. 22526 & 23031

**OBJECTION OF MARYLAND CASUALTY COMPANY TO
EXHIBITS TO BE RELIED UPON AT THE
PHASE II PLAN CONFIRMATION HEARING**

Maryland Casualty Company (“MCC”), by and through its undersigned counsel, hereby objects to exhibits proposed to be introduced by the parties in these cases as trial exhibits for the Phase II Plan Confirmation hearing¹ (“Exhibits”) as follows:

General Objections

1. MCC objects to all Exhibits that are inconsistent with MCC’s interests on the basis that such exhibits:

- (a) lack foundation;
- (b) are irrelevant, immaterial and/or unnecessary and are thus inadmissible under Rules 402 and 403 of the Federal Rules of Evidence;
- (c) constitute hearsay and are thus inadmissible under Rule 802 of the Federal Rules of Evidence; and/or
- (d) are not the best evidence.

Specific Objections

2. In addition to, and without waiving, any of the general objections stated above, MCC objects to the admission of any of the Libby Claimants’ Exhibits to the extent such exhibits

¹ The parties submitted lists of proposed exhibits in their “Pre-Trial Submissions” and/or separate exhibit lists.

are used in opposition to the positions and interests of MCC.²

3. Additionally, MCC objects to the following specific exhibits listed in *Libby Claimants' Amended Final Exhibit List* [D.I. No. 23031] on the grounds stated below:

Exhibit No.	Exhibit Description	Specific Objection
LC-57	Transcript of proceeding in <i>U.S. v. W.R. Grace & Co., et al.</i> , Case No. CR05-07-M-DWM, U.S. District Court for the District of Montana (Missoula Division), February 23, 2009 at 1:00 p.m., at pp. 112-13.	Relevance, Hearsay
LC-59	Photographs of W.R. Grace/Zonolite facilities at Libby mine and mill near Libby, Lincoln County, Montana, Bates stamped LC59 00001-000234.	Foundation, Relevance
LC-60	Photographs of W.R. Grace/Zonolite screening facility, conveyer system, and loading facility on Kootenai River, Lincoln County, Montana. Bates stamped LC60 00001-00004.	Foundation, Relevance
LC-67	"Common Exhibits" previously produced by compact disk at the time of production of the expert report of Terry Spear, Ph.D. – Includes W.R. Grace/Zonolite correspondence, memoranda, and documentation concerning the asbestos health hazard at Libby, Lincoln County, Montana. Bates stamped LC67 00001-004166.	Lack of notice, Lack of specific identification, Lack of compliance with the CMO, Relevance, Hearsay
LC-68	Reports of Industrial Hygiene Studies of the Zonolite Company and/or W.R. Grace & Company generated by the Montana State Board of Health concerning asbestos, asbestos dust, and asbestos hazards at the Zonolite/Grace mine, mill and other facilities in Libby and/or Lincoln County, Montana. Bates stamped LC68 00001-00024.	Foundation, Relevance, Hearsay

² During a "meet and confer" among the parties held on August 20, 2009, counsel for the Libby Claimants agreed that the Libby Claimants' Exhibits would be used only against the Plan Proponents, and not any other parties at the Phase II Plan Confirmation Hearing.

LC-69a, 69b, 69c, 69d, 69e, 69f, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 85, 86	Transcript excerpts that were produced and filed by Friday August 14, 2009, pursuant to Fourth CMO	Relevance, Hearsay
LC-87	Trial Exhibits from <i>Dan Schnetter v. W.R. Grace</i> , Nineteenth Judicial District Court, Lincoln County, Montana, Cause No. CDV-94-74. Bates stamped LC87 00001-001206.	Lack of notice, Lack of specific identification, Lack of compliance with the CMO, Relevance, Hearsay
LC-108	Expert Report of Dr. Terry Spear 12/08	Foundation, Relevance, Hearsay

4. In addition to, and without waiving, any of the general objections stated above, MCC objects to the following exhibits listed in *Pre-Trial Submission of BNSF Railway Company* [D.I. No. 22526] on the grounds stated below:

Exhibit No.	Exhibit Description	Specific Objection
BNSF16A	Maryland Casualty Company policy number 50-695902, renewal of 50-511902, insuring Great Northern Railway Co., for policy years April 20, 1971 through April 20, 1974. Bates stamped BURL3495A-3505A.	Relevance
BNSF16B	Maryland Casualty Company policy number 50-695902, renewal of 50-511902, insuring Great Northern Railway Co., for policy years April 20, 1971 through April 20, 1974. Bates stamped BURL34B-40B.	Relevance
BNSF48-BNSF 59	Miscellaneous Letters	Foundation, Relevance, Hearsay
BNSF81	Letter dated August 30, 2006, to Jon M. Moyers from Heather M. Miranda. Bates stamped BURL3583A-3593A.	Relevance, Hearsay

Reservation of Rights

5. MCC reserves its right to object to any and all Exhibits relied upon by any party at the Phase II Confirmation Hearing on any grounds under the Federal Rules of Evidence based upon the context and/or purported purpose of the exhibit as offered. MCC further reserves its right to withdraw any of the foregoing objections.

6. This Objection is submitted without waiver of any of MCC's rights, including its right to raise additional objections to evidence introduced prior to or during the Phase II Plan Confirmation Hearing.

7. MCC hereby joins objections to exhibits filed by other parties, to the extent that such objections are consistent with MCC's interests.

Dated: September 1, 2009

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